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EXAMINER

BAYARD, DJENANE M

ART UNIT PAPER NUMBER

2141

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/728,442	Applicant(s) LEMLER ET AL.	
	Examiner Djenane M. Bayard	Art Unit 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15, 16, 18, 19, 21-23, 25-34, 36, 37, 39, 40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-16, 18-19, 21-23, 25-34, 36-37, 39-40, 42-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in response to amendment filed on 12/05/05 in which claims 1-13,15-16,18-19,21-23,25-34,36-37,39-40 and 42-43 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5-6, 11, 25 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elleson in view of U.S. Patent No. 6,336,138 to Caswell et al and further in view of No. 6,701,342 to Bartz et al.

a. As per claims 1, 6, and 10-11, Elleson et al teaches monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: creating a schema that provides a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements (See section 2.1, architectural Overview "the administrator- specified rules are stored

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in the policy repository or schema) and verifying that the information defining said particular service level agreement conforms to the set of rules in said schema (See section 2.1, Architectural Overview, “These rules could specify for instance the service category to be employed for a particular application....The directory client downloads the policy rules from the repository, and uses these rules to classify the packet stream and apply specific actions to thus identified packets). However, Ellesson et fails to teach wherein the schema provide a set of rules for defining both the contents of service level agreement and how to organize the contents, and receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer.

Caswell et al teaches a template driven model approach for generating models on network services. Furthermore, Caswell et al teaches wherein the schema provides a set of rules for defining both the contents of service level agreement and how to organize the contents (See col. 4, lines 1-66). Caswell also teaches receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer.

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema provide a set of rules for defining both the contents of service level agreement and how to organize the contents as taught by Caswell et al in the claimed invention of Ellesson et al in order to provide facilitate construction of a model of a core service available via the network (See col. 3, lines 26-30).

Bartz et al teaches receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See col. 5, lines 35-45 and col. 7, lines 45-65). Furthermore, Bartz et al teaches receiving second information defining a service level contract, wherein said second information defines apply times for performing the one or more test; and verifying that said first information defining the service level agreement and said second information defining the service level contract conform with the level of service that has been offered to the customer by the service provider (See col. 5, lines 27-65).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer as taught by Bartz et al in the claimed invention of Elleson et al in order to include measurement and condition into the SLA (See col. 5, lines 35-40).

b. As per claims 5, 29, 33, Elleson et al in view of Caswell et al and further in view of Bartz teaches the claimed invention as described above. However, Elleson et al in view of Caswell et al fails to teach the steps of verifying that the network includes one or more devices that may be configured to perform the one or more tests.

Bartz et al teaches one or more devices that may be configured to perform the one or more tests (See col. 4, lines 45-55).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate one or more devices that may be configured to perform the one or more

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tests as taught by Bartz et al in the claimed invention of Ellesson et al in view of Caswell et al in order to collect measurement data from various resources (See col. 4, lines 30-31).

c. As per claim 25, Ellesson et al teaches verifying that the particular network includes one or more devices that may be configured to perform the one or more tests (See col. 6, lines 28-39).

4. Claims 2,7 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson in view of U.S. Patent No. 6,701,342 to Bartz et al as and further in view of U.S. Patent No. 6,336,138 to Caswell et al applied to claims 1 and 6 above, and further in view of U.S. Patent No. 6,704,883 to Zhang et al.

a. As per claims 2, 7, 26 and 30, Ellesson et al in view of Caswell et al and further in view of Bartz teaches the claimed invention as described above. However, Ellesson et al in view of Caswell et al fails to teach wherein if said information defining said particular service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test

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engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Zhang in the claimed invention of Elleson et al in view of Caswell et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

Claims 4, 9, 28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elleson in view of U.S. Patent No. 6,701,342 to Bartz et al as and further in view of U.S. Patent No. 6,336,138 to Caswell et al applied to claims 1 and 6 above, and further in view of U.S. Patent No. U.S. Patent No. 6,397,359 to Chandra et al.

a. As per claims 4, 9, 28 and 32, Elleson et al in view of Caswell et al and further in view of Bartz teaches the claimed invention as described above. However, Elleson et al in view of Caswell et al and further in view of Bartz et al fails to teach generating, at a server, interface data for defining the service level agreement; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider.

Chandra et al generating, at a server, interface data for defining the service level agreement; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 7, lines 49 and col. 8, lines 48-57).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Chandra et al in the claimed invention of Ellesson et al in order to provide the automated evaluation of the acceptability of monitored performance of the network (See col. 2, lines 60-64).

5. Claims 12, 15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459682 to Ellesson et al in view of U.S. Patent No. 6,397359 to Chandra et al.

a. As per claim 12, 15 and 21, Ellesson et al teaches a method for monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of receiving information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See Section, overview “ the network administrator needs the ability to define and administer different types of services for customers” and section architectural overview “ the network administrator uses the management tool to populate the policy repository with a number of policy rules that regulate access); However, Ellesson et al fails to teach distributing the one or more tests to one or more agents that are configured to communicate with devices that are

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associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered and generating, at a server, interface data for defining the service level agreement; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider.

Chandra et al teaches methods, systems and computer program products for scheduled network performance testing. Furthermore, Chandra et al teaches distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network (See col. 12, lines 8-29); receiving result information based on the devices performing the one or more tests (See col. 10, lines 52-56); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 14, lines 39-67). Furthermore, Chandra et al generating, at a server, interface data for defining the service level agreement; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 7, lines 49 and col. 8, lines 48-57).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Chandra et al in the claimed invention of Ellesson et al in order to provide the automated evaluation of the acceptability of monitored performance of the network (See col. 2, lines 60-64).

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6. Claims 3, 8, 27, 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 6,701,342 to Bartz et al. and further in view of U.S. Patent Application Publication No. 202/0049815 to Dattatri et al.

a. As per claims 3,8, 27, 31 and 34, Ellesson et al in view of Bartz et al teaches the claimed invention as described above. However, Ellesson et al in view of Bartz fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

10. Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,704883 to Zhang et al as applied to claim 12 above, and further in view of U.S. Patent Application Publication No. 202/0049815 to Dattatri et al.

a. As per claims 13 and 16, Ellesson et al in view of Bartz et al teaches the claimed invention as described above. Furthermore, Ellesson et al fails to teach wherein the step of

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creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012].

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008].

11. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,704,883 to Zhang et al and further in view of U.S. Patent No. 6,466,984 to Naveh et al.

a. As per claim 18, Ellesson et al teaches a computer-readable medium accessible by the processor and comprising one or more sequences of instructions which, when executed by the processor, cause the processor to carry out the steps of: receiving, information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See architectural Overview); However, Ellesson et al fails to teach distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing

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reporting information that indicates whether the customer is receiving the level of service that has been offered and a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface;

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the computer-readable medium further comprises instruction for performing the steps of: if said information defining the service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configure to communicate with devices that are associated with the particular network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Zhang et al in the claimed invention of Elleson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

Naveh et al teaches a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface (See col. Col. 17, lines 11-15); a processor coupled to the network interface and receiving information from the network interface (See col. 17, line 51).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface as taught by Naveh et al in the claimed invention of Elleson et al in view of Bartz et al in order to integrate application into a policy based networking system (See col. 5, lines 14-15).

11. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elleson et al in view of U.S. Patent No. 6,704,883 to Zhang et al, further in view of U.S. Patent No. 6,466,984 to Naveh et al as applied to claim 18 above, and further in view of U.S. Patent Application Publication No. 2002/0049815 to Dattatri.

a. As per claim 19, Elleson et al in view of Bartz et al and further in view of Naveh et al teaches the claimed invention as described above. Furthermore, Elleson et al fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See section architectural

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overview). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012].

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al and further in view of Naveh et al in order to provide tracking and monitoring (See page 1, paragraph [0008].

12. Claims 22-23, 36-37, 39-40 and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,701,342 to Bartz et al in view of U.S. Patent No. 6,336,138 to Caswell et al.

a. As per claims 22, 36, 39 and 42, Bartz et al teaches a method storing information that defines the level of service that has been guaranteed to the customer by the service provider (See col. 13, lines 45-51). However, Bartz et al fails to teach wherein the one or more tests are one or more metric tests, and the step of receiving information defining the service level agreement comprises: receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service that has been guaranteed by the service provider; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer by the service provider.

Caswell et al teaches receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service (See col. 9, lines 31-50 and col. 10, lines 1-47); and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer (See col. 12, lines 35-54).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate teach receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer as taught by Chandra et al in the claimed invention of Bartz et al in order to facilitate the construction of a model core service available via the network (See col. 3, lines 28-29).

b. As per claims 23, 37, 40 and 43, Ellesson et al in view of Bartz et al and further in view of Carley et al teaches the claimed invention as described above. However, Ellesson et al in view of Bartz et al and further in view of Carley et al fails to teach wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider.

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Carley et al teaches wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider (See col. 37, lines 7-15).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider as taught by Carley et al in the claimed invention of Ellessen et al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878.

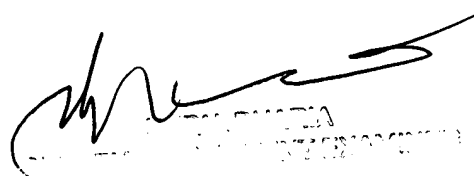
The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

Patent examiner

A handwritten signature in black ink, appearing to read 'Djenane Bayard', is written over a faint, rectangular official stamp. The signature is fluid and cursive.